
VII. Memoranda of Understanding

This chapter describes those *Galveston Bay Plan (Plan)* actions which will require establishment of a formal Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) between two or more agencies to coordinate regulatory or other programs. The Galveston Bay Program (GBP) will help initiate the MOU negotiations, however, it will be the responsibility of the agencies involved to actually implement the MOU, provide appropriate public notice and issue rules, if necessary.

MOUs identified in the *Plan* are shown below, by implementation year, along with corresponding *Plan* action numbers.

FY 1995

- **Determine location and extent of bypass and overflow problems; require corrective actions.** (*PS-1, PS-2*)

The *Plan (PS-1, PS-2)* recommends that EPA and TNRCC work jointly to issue Administrative Orders requiring Publicly Owned Treatment Works (POTW) permit holders to conduct studies to determine the location and extent of bypass and overflow problems, to develop appropriate corrective action plans, and to implement those plans. EPA and TNRCC *may* choose to enter into an MOU regarding the conditions and phase-in of these Administrative Orders. The MOU should outline agency responsibilities with respect to large and small POTW permit holders.

- **Maintain a citizen pollution reporting system.** (*PPE-6*)

The *Plan (PPE-6)* recommends that the TNRCC provide full-time staff support to maintain the Citizen's Pollution and Reporting Response System (CPRRS) and that the CPRRS be moved from the TNRCC regional office to the Galveston Bay Program Office as soon as feasible. Additionally, the TNRCC may wish to expand the number of agencies now participating in the CPRRS. Currently, the following agencies have executed MOUs with the TNRCC to participate: Corps; EPA; USFWS; TDH; RRC; and the Texas City Terminal Railway Company. An example MOU for agency reporting and response operations can be found in the GBNEP publication *Citizen's Pollution Reporting and Response System Final Report*.

FY 1996

- **Establish a damage assessment pre-screening procedure.** (*SD-1*)

The *Plan (SD-1)* recommends that the five natural resource trustee agencies (USFWS, NOAA, GLO, TNRCC and TPWD) establish an MOU to delineate the roles of the trustees during a spill and to detail procedures for coordinating

joint assessments. All provisions of the MOU must be compatible with applicable state and federal statutes and regulations (see citations/discussion in *Spills/Dumping* section of Chapter 4).

FY 1997

- **Develop an MOU to standardize wetlands mitigation criteria, policies and requirements (HP-4)**

The *Plan (HP-4)* identifies the GLO as the lead agency for coordinating an MOU to standardize wetlands mitigation criteria, policies and requirements. The MOU should address mitigation banking, mitigation ratios, reporting requirements, TCMP consistency, acceptable wetland habitat methodology, and special measures, such as performance bonds, to ensure that mitigation measures are carried out as prescribed in permits. The following agencies will participate in this MOU: Corps; EPA; USFWS; NMFS; GLO; TNRCC; TPWD.

Type of Agreement Needed

This action calls for standardizing wetland mitigation criteria, policies and requirements. Current Section 404 of the Clean Water Act (33 U.S.C. § 1344) requirements necessitate that the Corps Galveston District Office be the lead in implementing the Memorandum of Agreement (MOA--note: the Corps generally uses the "MOA" terminology). While the MOA will originate from the District Office it must be approved through Washington before it can be implemented. The Corps could either create one MOA with all six participating agencies, or six individual MOAs (one with each agency).

The MOA (or MOAs) must be consistent with any existing federal and state statutes, regulations, and policies currently affecting wetlands (see citations/discussion in *Habitat Protection* section of Chapter 4 of this report), and any new regulations or policies resulting from the adoption and implementation of the TCMP. Also, the MOA should take into account the June 1993 *Interagency Guidelines for the Development and Use of Mitigation Banks in the Galveston District, Corps of Engineers*, or any individual mitigation bank MOA created or under creation following the *Interagency Guidelines*. A potential outline for the MOA (MOAs) is presented in Figure 6 on the following page.

**FIGURE 6. Potential Outline For A
Memorandum of Agreement Between {Agency or Agencies}
and U.S. Army Corps Of Engineers, Galveston District**

1. **Authority:** Section 404 of the Clean Water Act, 33 U.S.C § 1344 {and other authority necessary for inclusion of State agencies}
2. **Purpose:** Establish uniform wetland mitigation criteria, policies and requirements in the Galveston Bay system to implement Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act and the Galveston Bay National Estuary Program. {may expand section to explain need of MOA to coordinate implementation of the Galveston Bay Plan.}
3. **Applicability:** This agreement shall apply to Regulatory authorities under: (a) Section 10 of the Rivers and Harbors Act of 1899; (b) Section 404 of the Clean Water Act; and (c) Section 320 of the Clean Water Act, in the *Galveston Bay Plan* management area.
4. **General Rules:** Policy and procedures for the Department of Army Regulatory Program are established in 33 CFR Parts 320 through 330, and Environmental Protection Agency and Department of Army Regulatory Program in 40 CFR 230.
5. **Organization:** This Memorandum of Agreement is subdivided into six distinct parts. The procedures for each part are specific to that part and do not necessarily relate to other parts. For example, agency responsibility or signature levels may vary for parts II through VI.

PART I - Background

1. {statement of Corps responsibility as final decision maker pursuant to Section 10, Section 404 and other relevant legislation}
2. {statement of role EPA has in Section 10, and Section 404 permitting decisions}
3. {statement of role USFWS has in Section 10, and Section 404 permitting decisions}
3. {statement of role NMFS has in Section 10, and Section 404 permitting decisions}
4. {statement of role TNRCC has in Section 10, and Section 404 permitting decisions}
5. {statement of role GLO has in Section 10, and Section 404 permitting decisions}
6. {statement of role TPWD has in Section 10, and Section 404 permitting decisions}

7. {statement of the geographic scope and applicability of this MOA}
8. This agreement does not diminish either Corps Galveston District authority to decide whether a particular individual permit should be granted, including determining whether the project is in compliance with the Section 404, or the EPA Administrator's authority under Section 404 of the Clean Water Act.
9. The officials identified in this MOA cannot delegate their responsibilities unless specifically provided for in the MOA.
10. {implementation date and termination date of the MOA. Also, include procedures for updating or review of the MOA and revoking the MOA}
11. {legislation, policies, or other MOAs affected by this MOA. This should include discussion of the *Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines* (Nov. 15, 1989), Regulatory Guidance Letter, No. 93-2 *Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking* 11 (Aug. 23, 1993), and the June 1993 *Interagency Guidelines for the Development and Use of Mitigation Banks in the Galveston District, Corps of Engineers.*}
12. {MOAs and Interagency guidelines terminated by this MOA}
13. {definitions used in the MOA}

PART II - MITIGATION BANKING IN THE GALVESTON BAY AREA

1. Purpose: {purpose of mitigation banking inclusion in the MOA and why mitigation banking is important to *Galveston Bay Plan* implementation}
2. Coordination Procedures:
 - a. {roles of agencies in approving mitigation banks}
 - b. {call for interagency guidelines to be developed to implement the MOA, including necessary elements of any potential guidelines}
3. Mitigation Bank Criteria
 - a. {early consultation process}
 - b. {location of mitigation banks}
 - c. {evaluation procedures of potential wetland banks}
 - d. {mitigation bank site plan requirements}
 - e. {approval of mitigation bank plans}
 - f. {use of mitigation credits, i.e. when a bank can begin use, sequencing and mitigation ratios}
 - g. {bank operation, maintenance and ownership requirements}

PART III - MITIGATION RATIOS IN THE GALVESTON BAY AREA

1. Purpose: {purpose of mitigation ratios inclusion in the MOA and why mitigation ratios are important to *Galveston Bay Plan* implementation}
2. Coordination Procedures:
 - a. {roles of agencies in approving mitigation ratios}
 - b. {call for interagency guidelines to be developed to implement the MOA, including necessary elements of any potential guidelines}
3. Mitigation Ratios
 - a. {sequencing - when mitigation ratios may be used}
 - b. {types of acceptable ratios - size, functional value, habitat type. Resolution of State (three-for-one) and Federal (one-for-one minimum) differences on functional replacement}
 - c. {wetland habitat determination methodology}
 - d. {preference for in-kind over out-of-kind mitigation}
 - e. {mitigation ratios as part of a mitigation bank}
 - f. {evaluation procedures to determine if ratios have been met (additional discussion of these requirements may be included in Part IV)}

PART IV - REPORTING REQUIREMENTS IN THE GALVESTON BAY AREA

1. Purpose: {purpose of mitigation reporting requirements inclusion in the MOA and why reporting requirements are important in the implementation of the *Galveston Bay Plan*}
2. Coordination Procedures:
 - a. {roles and requirements of agencies in mitigation reporting requirements}
 - b. {call for interagency guidelines to be developed to implement the MOA, including necessary elements of any potential guidelines}
3. Mitigation Reporting Requirements
 - a. {Federal agency reporting requirements - timing and report requirements}
 - b. {State agency reporting requirements - timing and report requirements}
 - c. {reporting requirements of all other 404/10 permit applicants - timing and report requirements}
 - d. {mitigation bank site plan reporting requirements - timing and report requirements (including credits used, available, site development, etc.)}
 - e. {inspection and approval procedures for mitigation reports}

PART V - SPECIAL MEASURES IN WETLAND MITIGATION IN THE GALVESTON BAY AREA

1. Purpose: {Discussion of special measures which are necessary to implement wetlands mitigation in the Galveston Bay management area and why they are important to *Galveston Bay Plan* implementation}
2. Coordination Procedures:

- a. {roles of agencies in particular areas of concern}
 - b. {call for interagency guidelines to be developed to implement the MOA, including necessary elements of any potential guidelines}
3. Special Measures in Wetland Mitigation in the Galveston Bay Management Area
- a. {performance bonds for mitigation projects}
 - b. {performance bonds for mitigation banks}
 - c. {dispute resolution between resource agencies}
 - d. {other necessary special measures}

PART VI - TCMP CONSISTENCY

(This section may not be necessary in this MOA. TCMP consistency provisions may be spelled out in TCMP rules. Other rules may be created when the Galveston Bay Plan is adopted, in whole or in part, as a Special Area Management Plan (SAMP) by the Coastal Coordination Council (CCC). Other MOAs, if necessary, may be created between the GLO (or CCC) and Corps upon NOAA approval of a Texas Coastal Management Plan.)

{signature block}